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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CLASS ACTION

VICENTE RODRIGUEZ, JOVITA
RODRIGUEZ, and GUADALUPE FRANCO ,
on behalf of themselves and others similarly
situated,

Plaintiffs,

vs.

ACL FARMS, INC., KEVIN B. GAY and
WASHINGTON FARM LABOR SOURCE,
LLC.

Defendants.

No. CV-10-3010-LRS

PLAINTIFFS' SECOND
AMENDED COMPLAINT
FOR DAMAGES

PRELIMINARY STATEMENT

1. Federal law requires that United States agricultural workers be given
preference over all foreign agricultural workers whom employers seek to import

1 under the federal H-2A program.¹ This is a class action brought by three United
2 States farm workers from the Yakima Valley. In 2008 Defendants ACL Farms,
3 Inc. (ACL Farms) and Washington Farm Labor Source (WA-FLS) unlawfully
4 obtained approval for H-2A “guest workers” and denied agricultural employment
5 to Plaintiffs and the class of workers they seek to represent in violation of federal
6 and state laws.
7

8 2. Plaintiffs seek to bring class claims for violations of the Migrant and
9 Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. §§ 1801 – 1872:
10 providing false or misleading information concerning the terms and conditions of
11 employment and failure to comply with the working arrangement.
12

13 3. Plaintiffs also seek to bring claims for violations of the Farm Labor
14 Contractors Act (FLCA), Chapter 19.30 RCW for making or causing to be made
15 false, fraudulent or misleading information concerning the terms, conditions or
16 existence of employment at ACL Farms.
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20 ¹ Workers who are in the United States under 8 U.S.C § 1101(a)(15)(H)(ii)(a),
21 which provides for temporary agricultural worker visas, are commonly known as
22 H-2A “guest workers.”
23

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal Questions).

5. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1854 (AWPA).

6. This Court also has jurisdiction over this action pursuant to 29 U.S.C. § 1367 (Supplemental Jurisdiction).

PARTIES

7. At all times relevant to this complaint, the Plaintiffs were all either seasonal or migrant agricultural workers within the meaning of 29 U.S.C. § 1802(10)(A) and 29 U.S.C. §1802(8).

8. Plaintiff Vicente Rodriguez worked for ACL Farms from February 2008 to May 2008, and in June and July 2008.

9. Plaintiff Guadalupe Franco worked for ACL Farms from March 2008 to May 2008, and in June and July 2008.

10. Plaintiff Jovita Rodriguez worked for ACL Farms in June and July 2008.

11. Defendant ACL Farms is a Washington corporation with its principal place of business in Zillah, Washington.

1 12. Defendant ACL Farms is an agricultural employer as defined by 29
2 U.S.C. § 1802(2).

3 13. Defendant Kevin B. Gay is the registered agent and President of ACL
4 Farms.

5 14. Defendant Kevin B. Gay committed or authorized the acts and
6 omissions alleged herein to have been committed by Defendant ACL Farms.

7 15. Defendant Kevin B. Gay is an agricultural employer as defined by 29
8 U.S.C. § 1802(2).

9 16. WA-FLS is a licensed Farm Labor Contractor in Washington State.

10 17. WA-FLS was the agent of ACL Farms for the purpose of petitioning
11 the necessary governmental agencies to obtain H-2A “guest workers” to meet the
12 needs of ACL Farms.

13 18. WA-FLS committed or authorized the acts and omissions alleged
14 herein in their capacity as a Farm Labor Contractor as defined by RCW 19.30.010
15 (2) & (3).

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19 **CLASS ACTION ALLEGATIONS**

20 A. **PLAINTIFF CLASS**

21 19. Plaintiffs bring this action on their own behalf and on behalf of the
22 class of persons similarly situated, pursuant to Federal Rules of Civil Procedure
23

1 23(a) and (b)(3), consisting of all farm workers who were not H-2A workers, and
2 who worked for ACL Farms from April 7, 2008 through 50% of the period of the
3 contract under the terms of the approved clearance order, approximately August
4 16, 2008 (the class).

5
6 20. The class is so numerous that joinder of all members is impracticable.
7 The exact size of the class is not known; however on information and belief the
8 class consists of approximately 135 persons.

9
10 21. Representative Plaintiffs are represented by experienced counsel who
11 will vigorously prosecute the litigation on behalf of the class.

12 22. Questions of law and fact common to the members of the class
13 predominate over any questions affecting only individual members, and a class
14 action is superior to other available methods for the fair and efficient adjudication
15 of the controversy because:

- 16 a. Members of the class do not have an overriding interest in
17 individually controlling the prosecution of separate actions;
18
19 b. No litigation concerning this controversy has been commenced
20 by any member of the class;
21
22 c. Concentration of the litigation in this forum is desirable in order
23 to have all claims resolved in one case; and

1 d. A class action can be managed without undue difficulty because
2 the issues presented are common to the class, Defendants are
3 required to maintain detailed records concerning each member
4 of the class, and Plaintiffs' counsel have experience in
5 prosecuting cases of this nature.
6

7 23. Common questions of law and fact include:

- 8 a. Whether ACL Farms provided false or misleading information
9 concerning the terms and conditions of employment in violation
10 of 29 U.S.C. § 1831(e) and 29 U.S.C. § 1821(f);
11
12 b. Whether ACL Farms violated the terms of their working
13 arrangement in violation of 29 U.S.C. § 1822(c) and 29 U.S.C.
14 § 1832(c).
15
16 c. Whether WA-FLS made or caused to be made false, fraudulent,
17 or misleading representations concerning the terms, conditions,
18 or existence of employment at ACL Farms, in violation of
19 RCW 19.30.120.

20 24. The claims of the representative Plaintiffs Vicente Rodriguez, Jovita
21 Rodriguez and Guadalupe Franco are typical of the claims of the Plaintiff class
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1 they seek to represent, and they will fairly and adequately protect the interests of
2 the class.

3 **STATEMENT OF FACTS**

4
5 25. On April 7, 2008, WA-FLS submitted to the U.S. Department of
6 Labor (DOL) an application for H-2A workers on behalf of ACL Farms.

7 26. The application sought 70 workers to be employed as farm workers at
8 ACL Farms from May 25, 2008 through November 5, 2008.

9 27. The application included an assurance that “[t]he job opportunity’s
10 conditions and occupational environment [would not be] contrary to Federal, State,
11 or local law.”

12
13 28. On April 25, 2008, the DOL Employment and Training
14 Administration approved Defendants’ request for 70 H-2A workers.

15 29. On information and belief, ACL Farms hired approximately 60 H-2A
16 workers from Mexico.

17
18 30. The H-2A workers began working in late May or early June 2008.

19 31. On information and belief, the employment agreement between ACL
20 Farms and the H-2A workers was from May 25, 2008 to November 5, 2008.

21 32. Plaintiff Vicente Rodriguez worked at ACL Farms from early
22 February 2008 until he was laid off in early May 2008.
23

1 33. A supervisor at ACL Farms told Plaintiff Vicente Rodriguez that they
2 would call him when work was available again, but no one from ACL Farms ever
3 called Plaintiff Vicente Rodriguez.
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5 34. Plaintiff Vicente Rodriguez called ACL Farms asking for work again
6 in early June 2008.

7 35. ACL Farms hired Plaintiff Vicente Rodriguez, and he began working
8 on or about June 9, 2008.

9 36. Plaintiff Vicente Rodriguez inquired about a job for his wife, Plaintiff
10 Jovita Rodriguez, and ACL Farms hired her, effective June 16, 2008.
11

12 37. Plaintiff Guadalupe Franco secured a job with ACL Farms, beginning
13 on March 3, 2008.

14 38. An ACL supervisor told Plaintiff Guadalupe Franco there was no
15 more work available on approximately May 3, 2008.
16

17 39. A supervisor at ACL Farms told Plaintiff Guadalupe Franco that they
18 would call him when work was available again, but no one from ACL Farms ever
19 called Plaintiff Guadalupe Franco.

20 40. Plaintiff Guadalupe Franco returned to ACL to see if there was work
21 available in mid-June.
22
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1 41. ACL Farms hired Plaintiff Guadalupe Franco and he began working
2 on or about June 15, 2008.

3 42. All three Plaintiffs did thinning work at ACL Farms from their hire
4 until June 28, 2008.

5 43. The cherry harvest at ACL Farms began on approximately June 28,
6 2009 and lasted until July 8, 2009.

7 44. All three Plaintiffs picked cherries for the duration of the harvest.

8 45. During the cherry harvest, ACL Farms employed approximately 100
9 migrant or seasonal (non-H-2A) agricultural workers.

10 46. On information and belief, ACL Farms laid off a majority of the class
11 members on the last day of cherry harvest.

12 47. ACL Farms laid off all three Plaintiffs on the last day of the cherry
13 harvest, July 8, 2008.

14 48. On July 8, 2008, Plaintiff Vicente Rodriguez looked for Pablo, a
15 supervisor employed by ACL Farms, to ask when work would be available again.

16 49. When Plaintiff Vicente Rodriguez could not find Pablo at the farm, he
17 called Pablo and spoke to him that afternoon.

18 50. Pablo told Plaintiff Vicente Rodriguez that he did not know when
19 work would be available again, but that he would call when work was available.
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1 51. On July 8, 2008, Plaintiff Guadalupe Franco left his telephone number
2 with an ACL Farms assistant, who said that ACL would call when there was work
3 available.
4

5 52. After ACL Farms laid Plaintiffs off on July 8, 2008, ACL Farms
6 never called any of the Plaintiffs about available work.

7 53. The H-2A workers continued to work during the cherry harvest and
8 for the remainder of the season at ACL Farms until approximately November
9 2008.
10

11 54. ACL Farms did not ever inform Plaintiffs that continuous work from
12 May to November 2008 was available to them.

13 55. On information and belief, ACL Farms did not ever inform class
14 members that continuous work from May to November 2008 was available to
15 them.
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17 56. ACL Farms did not ever inform Plaintiffs of the other terms and
18 conditions of the clearance order.

19 57. On information and belief, ACL Farms did not ever inform class
20 members of the other terms and conditions of the clearance order.
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1 58. ACL Farms failed to offer work to class members, terminated class
2 members without cause, or otherwise failed to provide class members with the
3 work promised in the clearance order.

4
5 59. WA-FLS agreed to take necessary steps to prepare the documents
6 required to establish ACL Farms's need for guest workers and to file such
7 applications as required.

8 60. WA-FLS overstated the number of workers needed by ACL Farms
9 and failed to accurately represent the dates of expected employment on the
10 Application for Employment Certification submitted to the United States
11 Department of Labor on behalf of ACL Farms.

12
13 61. WA-FLS instructed ACL Farms that ACL Farms was not required to
14 inform local workers of the terms and conditions of the clearance order unless
15 those workers were referred by Washington State WorkSource offices.

16
17 62. As a result of Defendants' actions alleged herein, Plaintiffs have
18 suffered economic damages.

19 63. On information and belief, as a result of Defendants' actions alleged
20 herein, class members have suffered economic damages.

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CAUSES OF ACTION

AWPA Violations

64. ACL Farms intentionally provided false or misleading information to the Plaintiff class about the terms, conditions, and existence of employment, in violation of AWPA, 29 U.S.C. § 1831(e) and 29 U.S.C. § 1821(f).

65. ACL Farms intentionally failed to offer and provide the Plaintiff class with the employment promised in the working arrangement, in violation of AWPA, 29 U.S.C. § 1832(c) and 29 U.S.C. § 1822(c).

FLCA Violations

66. WA-FLS made or caused to be made false, fraudulent or misleading representations concerning the terms, conditions or existence of employment at ACL Farms to the United States Department of Labor, in violation of RCW 19.30.120(2).

67. WA-FLS made or caused to be made false, fraudulent or misleading representations about the terms and conditions of employment at ACL Farms by instructing ACL Farms that they were not required to disclose the terms of the clearance order to all local workers, in violation of RCW 19.30.120(2).

PRAYER FOR RELIEF

Plaintiffs ask this Court to grant them the following relief:

1 1. Certify this action as a class action pursuant to Fed. R. Civ. P.
2 23(b)(3);

3 2. Award each of the Plaintiffs and the other members of the class their
4 actual damages or statutory damages of up to \$500, whichever is greater, for each
5 violation of the AWPB pursuant to 29 U.S.C. § 1854(c)(1);

6 3. Award each of the Plaintiffs and the other members of the class their
7 actual damages or statutory damages of \$500, whichever is greater, for each
8 violation of the FLCA, together with the cost of suit including reasonable
9 attorney's fees and costs pursuant to RCW 19.30.180;

10 4. Order the Department of Labor and Industries to tender to the Court
11 an amount equal to the full amount of all security deposits made pursuant to RCW
12 19.30.040 or the damages awarded to Plaintiffs, whichever is less, pursuant to
13 RCW 19.30.170(9);

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1 5. Grant other further relief as just and appropriate.
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4 DATED this 25th day of October, 2010.
5

6 COLUMBIA LEGAL SERVICES

7 s/ Andrea L. Schmitt

8 Lori Jordan Isley, WSBA #21724

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.

s/ Andrea L. Schmitt
Andrea L. Schmitt